



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,145	01/14/2004	Robert Thor Versluys	SON-05-1383	5764

35811 7590 03/27/2007
IP GROUP OF DLA PIPER US LLP
ONE LIBERTY PLACE
1650 MARKET ST, SUITE 4900
PHILADELPHIA, PA 19103

EXAMINER

PASCUA, JES F

ART UNIT	PAPER NUMBER
----------	--------------

3782

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.		Applicant(s)	
	10/758,145		VERSLUYS, ROBERT THOR	
	Examiner		Art Unit	
	Jes F. Pascua		3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 17-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/14/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1-16, in the reply filed on 12/18/2007 is acknowledged. The traversal is on the ground(s) that Groups I and II are directed towards the same subject matter and there would be no additional burden in performing a search on both groups. This is not found persuasive because the search required for the method of making the bag is not the same or required for the bag alone.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 12-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 12, the phrase "or the like" renders the claim indefinite because the claim includes polymer materials not actually disclosed (those triggered to expand by "or the like"), thereby rendering the scope of the claim unascertainable. See MPEP § 2173.05(d).

In claim 13, line 1, the recitation "stand-up pouch" is indefinite because it is not supported by recitation in the claim of sufficient structure to accomplish the function.

In claim 13, line 2, "the periphery" lacks antecedence.

Claims that have not been specifically mentioned are rejected since they depend from claims rejected under 35 U.S.C. § 112, second paragraph.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,008,027 to Polk.

Polk discloses a pouch (Fig. 4) comprising a front and back layers (16) and an expanded bead plastisol (32) positioned on the surface of the pouch between the layers and adjacent a seam joining together at least one of the two layers with another sheet (36). As a note, the plastisol disclosed by Polk is considered to be inherently expandable and inherently capable of being expanded by radio frequency.

6. Claims 1-3, 8, 9, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,070,398 to Lu.

Lu discloses a pouch formed from a folded, laminate material having an innermost layer of cured plastisol and sealed to itself along three edges. The plastisol of Lu is considered to be an inherently expandable polymeric material when subjected to curing. Therefore, the sealed pouch of Lu is considered to meet the recitation "the expandable polymer in an expanded state forming a bead along the seam." Regarding claim 13, the pouch of Lu is a stand-up pouch to the same degree as claimed in the preamble.

7. Claims 1 and 3-5 are rejected under 35 U.S.C. 102(a) and 102(e) as being anticipated by U.S. Patent No. 6,630,043 to Sloom.

Sloom discloses a first layer having a peripheral edge with a layer of polymeric material applied to at least one side of the layer in a pattern that is formed with at least one region including the peripheral edge and a plastic seal formed around and strengthening the peripheral edge. Sloom further discloses a second layer of identical construction as the first layer and attaching the first and second layers to each other along their peripheral edges to form a tote bag. The layer of polymeric material and strengthened peripheral seal is disclosed by Sloom as being a plastisol or puff plastisol liquid curable with heat. During the curing process, the layer of polymeric material is flattened and spread sideways to form the plastic seal around the peripheral edge. This meets the recitation "the expandable polymer in an expanded state forming a bead along the seam". It is noted that Sloom discloses that the polymeric material applied to

Art Unit: 3782

the peripheral edge may be a contrasting color to that of the layer to which it is applied (column 3, lines 51-53). This meets the recitation "plastisol based ink".

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Polk.

Polk discloses the claimed device, especially the expanded bead (32) being plastisol. However, it is unclear if the plastisol of Polk is plastisol based ink or a heat activated, plastisol puff ink. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to use plastisol based ink or a heat activated, plastisol puff ink for the expanded plastisol bead of Polk, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

10. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Slood.

Slood discloses the claimed invention except for the tote bag being formed by sealing the first and second layers together along three seams. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form

the tote bag of Slood by sealing the first and second layers together along three seams since it was known in the art that bags formed from two separate layers of material require three seams; two along the side edges and one along the bottom edge.

11. Claims 6 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slood.

Slood discloses the claimed device, especially the expandable polymer being plastisol. However, it is unclear if the plastisol of Slood is expandable by radio frequency, electron beams or microwaves. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to use plastisol that is expandable by radio frequency, electron beams or microwaves in the Slood bag, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

12. Claims 7-11 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slood.

Slood discloses the claimed invention except for first and second layers being a laminate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a laminate for the first and second panels of the Slood tote bag, since it has been held to be within the general skill of a worker in the art to

select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

Furthermore, Slood discloses the claimed invention except for the gusset between the first and second layers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a gusset between the first and second layers of the Slood tote bag since it was known in the art that gussets increase the bag's volumetric capacity and permit the bag to be stood up.

13. Claims 4, 5, 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu.

Lu discloses the claimed device, except it is unclear if the plastisol is plastisol based ink or a heat activated, plastisol puff ink. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to use plastisol based ink or a heat activated, plastisol puff ink for the plastisol Lu, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

14. Claims 7-11 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lu.

Furthermore, Lu discloses the claimed invention except for the gusset between the first and second layers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a gusset between the first and

second layers of the Lu bag since it was known in the art that gussets increase the bag's volumetric capacity and permit the bag to be stood up.

Conclusion

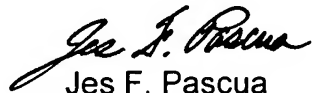
15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

16. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jes F. Pascua whose telephone number is 571-272-4546. The examiner can normally be reached on Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan J. Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Jes F. Pascua
Primary Examiner
Art Unit 3782

JFP